

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

MARGARITO GOMEZ,

Appellant,

v.

WASHINGTON STATE UNIVERSITY

Respondent.

) Case No. DISM-00-0087

)  
) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND ORDER OF THE BOARD

**I. INTRODUCTION**

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, GERALD L. MORGEN, Vice Chair. The hearing was held at the Vancouver Campus of Washington State University, Student Services Building, Room 236, Vancouver, Washington, on May 11, 2001. LEANA D. LAMB, Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Margarito Gomez did not appear and no representative appeared on his behalf. Donna Stambaugh, Assistant Attorney General, represented Respondent Washington State University.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty and insubordination. Respondent alleges that Appellant displayed a continuing pattern of tardiness, absenteeism and failed to perform his job.

1.4 **Citations Discussed.** WAC 358-30-170; WAC 251-12-240(1); Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995); Aquino v. University of Washington, PAB No. D93-163 (1995).

## II. FINDINGS OF FACT

2.1 Appellant Margarito Gomez was a Custodian and permanent employee for Respondent Washington State University at the Vancouver Campus. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on November 17, 2000.

2.2 By letter dated October 17, 2000, Hal Dengerink, Campus Executive Officer and Dean, informed Appellant of his dismissal effective October 31, 2000. Mr. Dengerink charged Appellant with neglect of duty and insubordination. Respondent specifically alleges that Appellant displayed a continuing pattern of tardiness, absenteeism and failed to perform his job despite repeated directives to improve his performance in those areas.

2.3 Appellant received following disciplinary and corrective actions:

- February 25, 1999 letter of reprimand for excessive absenteeism and failure to provide medical verification;
- April 22, 1999 letter of reprimand for insubordination and unexcused absence;
- August 31, 1999 letter of reprimand for excessive and unauthorized telephone calls;
- August 13, 1999 letter reducing his pay for three months;
- February 22, 2000 letter suspending him for a period of three days for neglect of duty incompetence for his excessive absenteeism and failure to adequately perform his duties and meet work expectations;
- July 6, 2000 letter suspending for seven days for neglect of duty and inefficiency for his excessive absenteeism.

1 2.4 Appellant's performance evaluations for 1998 and 1999 addressed his work deficiencies and  
2 excessive absenteeism.

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4 2.5 Despite repeated guidance and counseling, Appellant continued to exhibit a failure to meet  
5 work expectations and continued to be excessively absent from work or reported to work tardy.

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7 2.6 On June 1, 2, 15, 19, 2000 and July 6, 7, and 13, 2000, Appellant failed to attend shift  
8 briefings as required.

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10 2.7 On June 12, 15, 16, 19 and 20, 2000, Appellant requested additional day shifts to complete  
11 work that he should have been able to complete during his normal shift time.

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13 2.8 On May 31, 2000, a routine building inspection showed that Appellant failed to complete  
14 his work and failed to meet quality work standards.

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16 2.9 On June 1, 2000, Appellant could not be reached by radio and was absent for 45 minutes,  
17 however, he accounted for 8 hours of work on his time sheet.

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19 2.10 June 16, 2000, Appellant was not available by radio and was seen driving away from the  
20 campus during his shift time. When approached by his supervisor about the need for improvement,  
21 Appellant became argumentative.

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23 2.11 On June 21, 2000, Appellant again became argumentative when approached by his  
24 supervisor about the need for improvement.

1 2.12 On June 26, 2000, Appellant spent approximately 20 to 30 minutes talking to a coworker  
2 rather than performing the duties of his position. When approached by his supervisor about the  
3 importance of completing his work, Appellant became argumentative.

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5 2.13 On July 10, 2000, Appellant left the campus during his work shift without notifying his  
6 supervisor. Appellant walked away from his supervisor when she addressed the issue.

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8 2.14 On July 13, 2000, Appellant missed a shift meeting and could not be reached by radio.  
9 Appellant was later found making personal phone calls during his work shift.

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11 2.15 On August 17, 2000, Appellant failed to attend an orientation luncheon as directed,  
12 however, he reported 8 hours of work time on his time sheet.

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14 2.16 On September 1, 2000, Appellant called work at 3:55 p.m. to report he would be in about 45  
15 minutes late. Appellant did not report to work until 5 p.m., however, he failed to accurately report  
16 his time-in and time-out on his time sheet.

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18 2.17 On September 8, 2000, Appellant requested and was denied the day off. However,  
19 Appellant left his work shift approximately two hours early without requesting and receiving  
20 approval.

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22 2.18 On September 14, 15 and 19, 2000, Appellant reported late to work for a total of  
23 approximately three hours.

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25 2.19 On September 20, 2000, an inspection of Appellant's assigned area showed 15 work  
26 deficiencies which had to be re-done by other staff.

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2 2.20 On September 25, 2000, Appellant went off campus for approximately 35 minutes and failed  
3 to leave his work radio and keys on campus as required.

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5 2.21 Hal Dengerink, Campus Executive Officer and Dean for the University, was Appellant's  
6 appointing authority. Prior to imposing disciplinary action, Mr. Dengerink reviewed Appellant's  
7 employment history, including two previous letters of suspension, a reduction in pay, and numerous  
8 written reprimands. Mr. Dengerink found no mitigating circumstances for Appellant's repeated  
9 failure to report to work, his failure report to work on time, or his deficient work performance.  
10 When reviewing Appellant's history of poor performance and attendance, Mr. Dengerink  
11 considered the impact of Appellant's misconduct on other employees who were required to perform  
12 his duties and as a result created morale problems. Mr. Dengerink found Appellant's failure to  
13 improve or modify his behavior and his work performance unacceptable and he concluded that  
14 termination was the appropriate sanction.

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16 **III. ARGUMENTS OF THE PARTIES**

17 3.1 Respondent argues that Appellant received supervisory directives and was properly notified  
18 that he needed to improve his attendance and work performance. Respondent argues that Appellant  
19 had a long history of attendance problems and work deficiencies and that the numerous warnings he  
20 received were ineffective. Respondent argues that Appellant was advised of the consequences of  
21 failing to improve; that he was referred to employee advisory services; and was disciplined on  
22 three prior occasions for similar reasons. Respondent argues that Appellant's failure to report to  
23 work on time and failure to adequately perform his duties had a negative impact to other employees  
24 and that termination was the appropriate sanction.

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26 3.2 Appellant did not provide a defense to the allegations.

#### IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence that Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate under the facts and circumstances. WAC 358-30-170; WAC 251-12-240(1); Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987).

4.4 Insubordination is the refusal to comply with a lawful order or directive given by a superior and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995).

4.5 Although it is not appropriate to initiate discipline based on prior formal and informal disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No. D93-163 (1995).

4.6 Respondent has met its burden of proving by a preponderance of the evidence that Appellant neglected his duty and was insubordinate when he continued to be absent and tardy despite repeated

1 warnings from his supervisor. Furthermore, Respondent has established that Appellant failed to  
2 adequately perform job responsibilities. Respondent provided extensive evidence of its repeated  
3 attempts to assist Appellant to improve his performance. However, Appellant continued to display  
4 a pattern of tardiness and absenteeism, which had a negative impact on the workplace. Appellant  
5 had ample opportunity to modify his behavior his refusal to meet even the minimum expectations of  
6 his position shows a serious lack of regard for his job. Under the facts and circumstances presented,  
7 Respondent has proven that termination is the appropriate sanction, and the appeal should be  
8 denied.

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10 **V. ORDER**

11 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Margarito Gomez is denied.

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13 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

14  
15 WASHINGTON STATE PERSONNEL APPEALS BOARD

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18 Walter T. Hubbard, Chair

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21 Gerald L. Morgen, Vice Chair